

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1569 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SONAL R DESAI

Versus

STATE OF GUJARAT

Appearance:

MR DS SHAH for Petitioner
MR CHAUHAN ADD. PUBLIC PROSECUTOR
for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/12/97

ORAL JUDGEMENT

Rule. Mr. Chauhan, learned APP. waives the service of the Rule for Respondent No.1- the State of Gujarat. The petitioner seeks appropriate order as the learned Metropolitan Magistrate, Court No.19 at Ahmedabad, instead of passing appropriate order below application of the petitioner at Ex.19 presented in Criminal Case No. 2145 of 1993 on the file of that court, passed order for issuance of the warrant, though the prayer was to pass appropriate order, keeping Secs. 82 and 83 of Criminal Procedure Code, in mind.

2. It has been submitted that the Opponent Nos. 2 and 3 are the father-in-law and mother-in-law of the

petitioner. The husband of the petitioner at present resides in U.S.A. With a view to frustrate her matrimonial rights and to baffle her and deprive of her legitimate dues, her husband and opponent Nos. 2 and 3 are playing mischief and going on committing civil as well criminal wrongs. To remedy criminal wrong committed by the opponent Nos. 2 and 3, she has filed the complaint before the learned Metropolitan Magistrate for the offence under Sec. 406 I.P.Code. The opponent Nos. 2 and 3 were arrested. They were released on bail by the learned Magistrate. While releasing them on bail, certain conditions were imposed; and later on another condition came to be imposed, whereby the respondent nos. 2 and 3 were directed not to leave India. However if at all they wanted to, it could be, after taking prior permission of the court. Thereafter, without taking permission of the Court, they have left India and at present, their whereabouts are not known. Thereafter the she preferred the application for cancellation of bail which came to be dismissed by the trial court. Thereafter revision application was preferred before the City Sessions Court, Ahmedabad which was also turned down, and therefore, Special Criminal Application No. 1360 of 1997 was preferred before this court, wherein allowing the same, it was ordered that the bail granted in favour of respondent no.2 was cancelled and the learned Metropolitan Magistrate was directed to issue standing warrant to arrest the respondent no.2, as and when he returned to this country. Till today, as submitted, neither the respondent no.2 nor the respondent no.3 has come back to India. To have their presence before the court, coercive measures are required to be resorted to, and therefore, the applicant then filed the application Ex.19 for passing appropriate orders, keeping Sec. 82 and 83 Criminal Procedure Code in mind. Instead of passing appropriate order to meet with the situation, and have their presence before him, he gave chance to the immigrant opponents. The learned Magistrate took up the matter lightly and issued the warrant which was going to serve no purpose. In the meanwhile, it is submitted that the learned Magistrate had issued notice against the surety and the person who stood as surety for the opponent nos. 2 and 3, appeared before court and paid the amount of bond.

3. In view of such facts, the learned Magistrate ought to have considered that application and passed the appropriate order keeping Sec.82 and 83 of Criminal Procedure Code in mind. But when that is not done and a lenient view has been taken, the order passed below application Ex.19 in Criminal Case No. 2145 of 1993 is

required to be set aside and quashed. It is accordingly set aside and quashed, and the learned Magistrate is hereby directed to consider that application afresh and pass appropriate order latest by 30th December, 1997 in accordance with law. Interim relief granted by this court in terms of Para 11(B) on 15th December, 1997 shall continue till the application Ex.19 is disposed of. Rule accordingly made absolute. Direct service is permitted.

(ccs)